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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 350. 60

HENRY DEVERE; CATHERINE J. TEWELL, EXECUTRIX OF TIMOTHY TEWELL, DECEASED; OSCAR STOFFREIDEN, ET AL., APPELLANTS,

vs.

THE STEAMSHIP "HAVERTON," WILLIAM D. MILBURN & CO., OWNERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 14, 1887.

SUPREME COURT OF THE UNITED STATES.

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No. 350.

HENRY DEVERE; CATHERINE J. TEWELL, EXECUTRIX OF TIMOTHY TEWELL, DECEASED; OSCAR STOFFREIDEN, ET AL., APPELLANTS,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 12, 1890.

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

HENRY DEVERE *et al.*, Appellants,
vs.
STEAMSHIP HAVERTON, Appellees. } No. 11420.

Jas. Parker, Esquire, and Rouse & Grant, Esquires, for appellants; James McConnell, Jonas & Nixon, Esquires, for appellees.

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1887.

Transcript of Appeal.

1 HENRY DEVERE & *al.*
vs.
STEAMSHIP HAVERTON. } No. 12345.

Libel filed 17 Nov'ber, 1885.

District Court of the United States, Eastern District of Louisiana.

HENRY DEVERE; CATHARINE J. TEWELL, Executrix of the Last Will and Testament of Timothy Tewell, Dec'd; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, Libellants,
ag'st
THE BRITISH STEAMSHIP HAVERTON, HER ENGINES, BOILERS, TACKLE, APPAREL, and FURNITURE.

To the honorable judge of the district court of the United States for the eastern district of Louisiana:

The libel of Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell, dec'd; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, as owners of the schooner or pilot-boat "Mary and Catharine," of New York, against The British Steamship "Haverton," her engines, boilers, tackle, apparel, and furniture, and against all persons lawfully
2 intervening for their interests therein, in a cause of collision, civil and maritime, respectfully alleges and shows:

First. That the said steamship is a British vessel, and is now lying within the port of New Orleans, within the eastern district of Louisiana, and the jurisdiction of this honorable court.

Second. That at the time hereinafter mentioned your libellants, Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell, deceased; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, were the sole owners of the schooner (or pilot-boat) "Mary and Catharine," of

New York, of the burthen of $38\frac{64}{100}$ tons, which vessel was by them employed as a pilot-boat in the harbor of New York and adjacent waters and engaged in carrying pilots out to sea to meet vessels bound to the port of New York and piloting them into said port.

Third. That on the night of the sixth day of November, 1885, at about two o'clock and forty minutes a. m., the said schooner or pilot-boat "Mary and Catharine" was lying off the coast of New Jersey, at a point distant about twenty-one miles easterly from Absecon light-house; that the night was clear, so that objects could be seen with the naked eye for miles, and that such was the case during the occurrence hereinafter stated, and that during all such times the said schooner "Mary and Catharine" had all the lights required by law duly set and brightly burning, and the same continued to be so set and burning during all the times and occurrences hereinafter stated, and was well and efficiently manned and equipped, having in addition to her crew a number of regularly licensed pilots;

3 that the wind was about S. S. W. and was light; the sea was smooth, although there was considerable swell rolling from the southwest, and said schooner was lying hove to, under reefed fore and main sails, with bonnet off the jib, heading S. by E. $\frac{1}{2}$ E., with her jib sheet to windward, and was under very little, if any, headway.

That at about the hour named the watch on board said schooner discovered the green or starboard light of a vessel, which afterwards proved to be said steamship "Haverton," bearing about north from said schooner; that seeing no mast-head light said watch supposed that the vessel showing said green light was a sailing vessel; that the watch of said schooner very soon thereafter discovered that a mast-head light of the approaching vessel was being hoisted aloft to its proper place, and immediately displayed a bright bull's-eye light towards the approaching steamer, which light was shown fully about ten minutes prior to the collision which thereafter occurred; and, seeing that the said steamer continued to approach, said watch burnt a torch and kept the same displayed for at least five minutes prior to said collision, during all of which time the said steamship continued to advance, and about three o'clock ran into and collided with the said schooner "Mary and Catharine," striking her just abreast the foremast, on her port side, and so damaging the said schooner as to cause her to sink within fifteen minutes and, together with all the property and personal effects on board of her, to become a total loss.

Fourth. That during all the times and occurrences before

4 stated the said schooner "Mary and Catharine" (being hove to under reefed sails, was comparatively helpless, unable to tack by reason of such reduced sail and the heavy swell aforementioned, and was unable to do anything to avoid or prevent said collision, except to show the lights as stated) kept her course and did not change the same or do anything whatever to embarrass the said steamship "Haverton" or to prevent her from keeping out of the way of said schooner.

Fifth. That, besides being a steamship and as such bound to keep out of the way of said sailing vessel, the said steamship was coming up from astern of said sailing vessel.

Sixth. Your libellants further state that after said collision had occurred the said steamship "Haverton" proceeded on her course and made no effort whatever to afford any relief to the said schooner "Mary and Catharine," or to those who were on board of her.

Seventh. Your libellants further state that the said collision was caused wholly by the faults of the said steamship, in this: 1st, that she did not keep a proper lookout; 2nd, in that she did not carry the lights of a steamship which are required by law; 3rd, that said steamship, in coming up from astern, did not keep out of the way of said schooner; 4th, that, being a steamship, she did not keep out of the way of said sailing vessel; 5th, in that said steamship did not stop and back in time to avoid said collision.

And that said collision was not caused by any fault or failure of duty or by any manœuvre on the part of those in charge of
5 said schooner.

Eighth. Libellants, Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, say that as owners of said schooner "Mary and Catharine" and by reason of the said collision and wrongful conduct of said steamship they have suffered damages to the full value of said schooner "Mary and Catharine," her outfits and stores, which was the sum of ten thousand dollars; and further say that there was property and personal effects belonging to the pilots and crew severally of said vessel on board amounting to the further sum of three thousand dollars, which amount your libellants are authorized to include in this libel, all of which were a total loss, making the total amount of damages resulting from such collision the sum of thirteen thousand dollars ($13,000).

Ninth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellants pray that process in due form of law, according to the course and practice of this honorable court in case of admiralty and maritime jurisdiction, may issue against the said steamship "Haverton," her tackle, apparel, furniture, and engines, and that all persons having interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree in favor of your libel-
lants for the damages sustained as aforesaid, with their costs,
6 and that the said steamship may be condemned and sold to pay the same, and that otherwise law and justice in the premises may be administered.

And also that the claimant shall answer all the interrogatories hereto attached, and produce the original or sworn copies of the engineer's log and of the ship's log between the time when said steamship sailed from Sandy Hook, after discharging the outward

pilot, on the evening of Nov'r 5th, 1885, and the hour of eight a. m. on November 6th, 1885.

OSCAR STOFFREIDEN.

ROUSE & GRANT,
Proctors for Libellants.

Sworn to and subscribed before me this 14th day of November, 1885.

(Signed) EDWIN F. WIGHT,
Notary Public, N. Y. C.

Interrogatories.

First. Where was the steamship "Haverton" at two thirty o'clock a. m., November 6, 1885? Give exact position and bearing and distance of Absecon light, New Jersey.

Second. Were there any coast lights in sight? If yea, name them, and state how they bore by compass and what distance were they off, so far as could be judged. State time and distance off of last coast light seen.

Third. Who was the officer in charge of the watch of said steamship between two o'clock and four o'clock a. m. of November 6th, 1885? Give his full name and residences.

7 Fourth. What was the name of the man at the wheel during those hours and what is his residence?

Fifth. What was the name of the lookout or lookouts between those hours? Give their residences.

Sixth. Did the watch have any trouble with the mast-head light of the said steamer at any time between those hours? If yea, state was said light aloft during the whole time between those hours, or was it lowered and hoisted again, and how often, during that time.

Seventh. Was any protest noted and extended upon arrival of the said steamship at ——; and, if yea, what was the name of the notary before whom the same was noted and extended?

Let admiralty process issue as prayed for.

November 17, 1885.

(Signed) K. LOEW, *D'y Clk.*

Ad. Warrant. Issued November 17, 1885.

The President of the United States of America to the marshal of the eastern district of Louisiana or to his lawful deputy, Greeting:

You are hereby commanded forthwith to seize and into your possession take the British S. S. Haverton, her tackle &c., now
8 libelled by Henry Devere and others for the cause set forth in the libel, now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having or pretending to have any right, title, or interest in or to the same to be and appear before a district court of the United

States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said s'ship should not be condemned and sold agreeably to the prayer of libellants; and how you have executed this warrant that you make return according to law.

Witness the Honorable Edward C. Billings, judge of the said court, at New Orleans, this 17th day of November, 1885, and the 110th year of the Independence of the United States.

(Signed) K. LOEW, *D'y Clerk.*

Marshal's Return.

Received Nov. 17, 1885, by the U. S. marshal, and on the same day, month, and year I did seize and take into my possession the steamship Haverton, her tackle, apparel, machinery, and furniture, as she was then lying at this port, near the French market, in the Mississippi river, at New Orleans, and did publish monition in the New Orleans Picayune, as evidenced by the attached printed extract, which is made a part of this return; and on the 2nd day of
9 December, 1885, said steamship was released from seizure and delivered to claimants. Reference is made to the order of release herein issued and returned into court Dec'b'r 2, 1885; returned same day.

E. S. WURZBURGER,
D'y U. S. Marshal.

U. S. Dist. Court.

H. DEVERE *et al.*
vs.
S. S. HAVERTON, etc. } No. 12345.

Claim. Filed November 30, 1885.

To the honorable the judge of the district court of the United States for the eastern dist. of La.:

John Peters, master of the steamship Haverton, represents and says that at the date of the seizure of said steamship herein he was and is now master and in possession thereof, and as such is the lawful bailee thereof for the owners, William Milburn & Co., a commercial firm domiciled and doing business in Newcastle, England, and composed of William Milburn, Sr., John Davison Milburn, and William Milburn, Jr., and that said Wm. Milburn & Co. are the true and *bona fide* owners and no other person is owner thereof.

And thereupon said claimant prays a restitution of said
10 property to him as lawful bailee of said owners, and otherwise right and justice to administer in the premises.

JOHN PETERS.

Sworn to and subscribed before me this 30 Nov'b'r, 1885.

K. LOEW, *U. S. C.*

Release Bond.

UNITED STATES OF AMERICA,
Eastern District of Louisiana.

Know all men by these presents that we, William Milburn & Co., a commercial firm composed of Wm. Milburn, Jno. Davidson Milburn, and Wm. Milburn, Jr., by John Peters, master and our lawful bailee, of New Castle, claimants and owners of the steamship Haverton, as principals, and Wm. G. Coyle, of New Orleans, as surety, are held and firmly bound unto Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, libellants, in the sum of eighteen thousand dollars, lawful money of the United States of America; for the payment whereof to the said libellants, — heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

11

Witness our respective names and seals, hereunder affixed by us at New Orleans, this 2d day of December, one thousand eight hundred and eighty-five.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the eastern district of Louisiana, at the suit of Henry Devere and others *vs.* S. S. Haverton, her tackle, apparel, and furniture, and numbered 12345 on the docket of the said court, commanding the marshal to seize and take in his possession the said vessel, which has been seized accordingly, but has been released from said seizure and delivered to the claimants and owners thereof by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that if said claimant and surety abide by all the orders, interlocutory or final, of the court and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

WILLIAM MILBURN & CO. [L. S.]
By JOHN PETERS, [L. S.]
Master and Bailee.
W. G. COYLE. [L. S.]

Signed, sealed, and delivered in the presence of—
K. LOEW, *Dy Clk.*

Surety qualified in open court.

12 United States District Court.

H. DEVERE *et al.*
vs.
S. S. HAVERTON. } No. 12345.

Claimants' Answer to Libel and Answer to Interrogatories and Interrogatories Propounded to Libellants. Filed Dec'ber 5, 1885.

To the Honorable E. C. Billings, judge of the district court of the United States for eastern district of Louisiana:

The answer of Wm. Milburn & Co., a commercial firm doing business in Newcastle, England, and composed of William Milburn, Sr., John Davison Milburn, and William Milburn, Jr., by John Peters, master and lawful bailee of the steamship Haverton, first specially reserving all legal exceptions of every nature in the premises to the libel of Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell, deceased; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, as owners of the schooner or pilot-boat Mary and Catharine, of New York, alleges articulately as follows:

First. That at the time of the seizure herein said commercial firm of Wm. Milburn & Co. were the owners of said steamship Haverton, her tackle, apparel, and furniture.

13 Second. That the allegations of the first article of said libel are true; and further, in this connection, respondents say that said vessel was and is a new iron steamship, built in 1883, of 1,645 nett registered tonnage, 300 feet long, 37 feet 4 inches beam, 27½ feet depth of hold, the lower masts being of iron and the stays and all the rigging being of iron wire.

Third. That as to the matters and allegations contained in the second article of said libel respondents are ignorant and require proof.

Further answering, say they are informed, and therefore charge the truth to be, that said schooner was old and uninsurable and unfit for employment at sea as pilot-boat or otherwise.

Fourth. As to the allegations contained and set forth in the third, fourth, fifth, sixth, and seventh articles of said libel, respondents deny the same and require strict proof in the premises, except only as may be hereinafter admitted or otherwise stated; and in this connection, further answering, respondents say that about the time and place hereinafter stated a schooner, whose name was unknown to respondents and could not be ascertained, fouled said steamship, and, so far as respondents have any knowledge, the facts and circumstances of said fouling, as well as the facts preceding and connected therewith, were as follows:

On the 5th of November, 1885, at 5 p. m., the said steamship left the port of New York in ballast, bound on a voyage to New Orleans to procure a cargo. After making and passing Sandy Hook lightship the steamer took the course by compass of S. by W.,

14 which was the proper and customary course for steamers for said voyage; that said steamship was then and also at the

time of the said fouling well and fully officered, manned, and equipped in all respects, being also thoroughly well provided with all modern and approved appliances necessary for the skillful and successful navigation of iron ocean steamers of her size and class.

That said steamship pursued her said usual and proper course without deviation and without interruption until 2.30 a. m. on the 6th of November, and was then steaming at her average rate of speed of 10¼ knots an hour, with all proper lookouts and lights, and was then in her proper place and position, when she was suddenly and unexpectedly fouled by a schooner which showed no light of any kind at any time, either before or after said fouling, except a flare-up light, which was exhibited for a moment only, just as she came under the starboard bow of the steamer.

That the topmost back-stay or some part of the rigging of the schooner fouled the steamer's starboard fish-davit, and she then slipped clear, apparently without damage, passing 15 or 20 feet off, on the steamer's starboard side, and so disappeared in the darkness astern, the persons on board of her, if any they were, making no reply to repeated and loud hails to them as she passed from the officer on watch on the steamer. Respondents further say that the lookout bridge on said steamer was only 36 feet abaft the stem, was seven feet above the upper deck, five feet in width, and ex-
15 tended across the deck; that two competent lookouts were on watch constantly long before and at the time of the incidents hereinabove narrated, one being stationed on said lookout bridge, specially on duty as lookout, and the other on the upper deck forward; that the second officer of said steamer, being then on duty, was standing on said lookout bridge, near the starboard rail, and was himself occupied as lookout before and at the time of said fouling, but that said schooner was not seen or discovered by either of said lookouts or said officer, because said schooner had no light whatever to be seen, except the said flare-up light, which was exhibited for a moment only, when just under the steamer's bow, as above stated, and at a time too late to permit of any action by the officers of the steamer to avoid the fouling; that the instant the flare-up light was exhibited as aforesaid it was seen by the said second officer on watch from his position on the lookout bridge, and he then promptly caused the engines of the steamer to be reversed full speed until her headway was checked. The steamer was then stopped for some time and search with glasses made for the schooner or of lights from her, but ineffectually, as nothing whatever could be seen or heard of the same. The steamer then steamed ahead slowly, with helm hard aport, so as to bring her half around in near vicinity to where the schooner had last appeared, when, not seeing her nor any lights, the helm was put astarboard and she steamed slowly back until her head was brought S. S. E. by the compass; and then, still not seeing the schooner nor any light, notwithstanding due search and observation was constantly made for the
16 same, the steamer at 2.56 a. m. proceeded on her course.

Further answering, respondents say that at the time of said fouling and previously thereto and during all the hours of said

night, without intermission (except a momentary lowering of the white lights, as hereinafter explained), the lights of said steamer were burning brightly and were all in their proper places—a red light on her port side, a green light on her starboard side, and a white mast-head light in front of the foremast—all in accordance with the requirements of the rules of navigation established for preventing collision at sea; that the exception above mentioned was the momentary lowering of the mast-head light at about ten minutes after 2 a. m., or about 20 minutes before the said fouling, in order to clean the glass of the lantern containing said light, which was observed to be dim from some smoke on the glass, but still was sufficiently bright to be plainly visible for miles to any vessel in front of said steamship; that said lamp was lowered, the glass cleaned, and was hoisted again to its place in front of the foremast in a very few moments.

Fifth. Further answering, defendants specially deny, as is alleged in said libel, that said schooner had all the lights required by law duly set and brightly burning, and that the same continued to be so set and burning, &c.; and respondents, on the contrary, specially aver the truth to be that said schooner had no lights burning and showed no lights whatever at any time, except the flare-up light a moment only prior to the fouling, as hereinabove stated.

17 Sixth. Respondents admit that at the time of said fouling the wind was S. S. W. and was light; that the sea was smooth and the night was dark but clear.

Seventh. As to the matter and allegations contained in article eight, respondents are ignorant, but deny the same and require strict proof. They specially deny that said schooner "Mary and Catharine" and her outfit and stores were of the value of ten thousand dollars, as is alleged, or that there was property and personal effects on said vessel of the value of $3,000. Further answering, respondents say they have been informed, and therefore charge the truth to be, that said Mary and Catharine was an old boat, built about the year 1858, of little or no value and comdemned as uninsurable, and was unfit and unsafe as a pilot-boat or for any other maritime occupation.

Eighth. That the allegations in article ninth are untrue, except as to the matter of jurisdiction.

Ninth. That the said schooner which has been described herein as having fouled the steamer was at the time of said fouling, if she was a New York pilot-boat, out of her proper place, and took no steps or action whatever to avoid said fouling, which she might have easily done if she had been properly officered and manned, as the said steamer and her lights and course were plainly visible all the time, and her course was unchanged until she was backed at the moment of the fouling, as hereinbefore stated.

And your respondents and claimants herein, by the said
18 master and bailee, in obedience to the order of this honorable court directing that answers be made to the interrogatories attached to the libel herein, answer and say:

To interrogatory No. 1. At the time inquired of the said steamship was in latitude 39 18 north, longitude 73 56 west. Absecon

light was not there visible, but the bearing of said light was W. by N. ¼ N. from said steamship, as determined by the chart, U. S. Coast Survey, a copy of which is in evidence, marked Haverton No. 3, and said steamship was then 22 nautical miles distant from said Absecon light.

To interrogatory No. 2. There were no coast-lights in sight. Barnegat light was the last coast-light seen, at 11.50 p. m. of the 5th Nov., and then bore W. by N. by compass, W. ¾ N. magnetic, and was then distant 8½ miles; distance corrected by a four-point bearing.

To interrogatory No. 3. James McCracken, second officer; residence, 51 Brumley St., Commercial road, London, east.

To interrogatory No. 4. Henry Hayman; no residence.

To interrogatory No. 5. William Cawley; residence, 37 Upper Stanhope St., Liverpool, and James Jackson, 29 Flora St., Plymouth.

To interrogatory No. 6. No; the watch did not have any trouble with the mast-head light of said steamer at any time between those hours. Said light was aloft the whole time during those two
19 hours, with the exception of a very short time, say 1½ to 2 minutes, merely being hauled down to clear the glass and immediately hoisted again, which was about 2.15 a. m.; this was the only time it was lowered and hoisted again during that time.

To interrogatory No. 7. Yes; at New Orleans, Nov. 14, 1885, before Edward Ivy, notary public.

Wherefore respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid and condemn the libellants in costs, and also order that the said libellants shall severally answer under oath all the interrogatories hereto attached, and otherwise justice be administered in the premises.

WM. MILBURN & CO.,
By JOHN PETERS,
Master & Bailee.
JOHN PETERS.

JONAS & NIXON,
J. McCONNELL, *Proctors.*

John Peters, being first duly sworn, deposes he is master and bailee for the owners, Wm. Milburn & Co., of the said steamship Haverton; that the facts and allegations contained in the foregoing answer and also the answers hereinabove made to the interrogatories propounded in the libel are all true so far as they are stated to be from his personal knowledge, and in all other respects are true to the best of affiant's information, knowledge, and belief.

JOHN PETERS.

Sworn to and subscribed before me this 5th day of December, 1885,
K. LOEW,
U. S. Com'r.

20 *Judgment for Libellants and Reference May* 17, 1886.

HENRY DEVERE *et al.*
vs.
S. S. HAVERTON. } 12345.

This cause came on to be heard, and was argued by the proctors. And thereupon, upon consideration thereof, the court adjudges and decrees that the collision which took place between the pilot-boat "Mary & Catharine" and the "British steamship Haverton" was the result of mismanagement and want of proper care by those in charge of the steamship, and that the libellants are entitled to recover all damages they have suffered by said collision.

And it is referred to John Devonshire, commissioner, to examine and report the amount of such damages.

Judgment. Entered June 4th, 1886.

HENRY DEVERE *et al.*
vs.
S. S. HAVERTON. } 12345.

The commissioner's report herein was this day called up—Rouse & Grant appearing for libellants and Jonas & Nixon for claimants—and, after hearing the parties, it is ordered, adjudged, and decreed that claimants' exception to the report be overruled;
21 that said report stand confirmed, and that the libellants do have and recover from the steamship Haverton the sum of ($6,057) six thousand and fifty-seven dollars damages and costs of suit.

And whereas said steamship hath been released from seizure and restored to her owners on giving bond, conditioned as the law directs, it is further adjudged and decreed that Wm. Milburn & Co., a commercial firm composed of Wm. Milburn, John D. Milburn, & Wm. Milburn, Jr., of New Castle, England, owners of said steamship, as principals on the release bond, through John Peters, master and their lawful bailee, and W. G. Coyle, of New Orleans, as surety on said release bond, be condemned *in solido* to pay the foregoing judgment, with costs.

Judgment entered 4th June, 1886.

Judgment signed 10th June, 1886.

EDWARD C. BILLINGS, *Judge.*

Appeal. Granted June 14, 1886.

HENRY DEVERE *et al.*
vs.
S. S. HAVERTON. } 12345.

On motion of J. McConnell and Jonas & Nixon, proctors for William Milburn & Co. and William Milburn, Jno. D. Milburn,
22 and William Milburn, Jr., members of said firm, owners of the steamship Haverton, claimants herein, and for William

G. Coyle, also defendant herein, and on showing that a final decree was herein rendered on the 4th day of June, 1886, and signed on the 10th day of June, 1886, against them and in favor of the libellants herein, Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell, deceased; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, owners of the schooner or pilot-boat Mary & Catharine, for the sum of $6,057 damages and costs of suit; and on further suggesting to the court that they are informed and believe that there is error to their prejudice in said decree and they are desirous of taking a suspensive appeal therefrom—

It is ordered by the court that an appeal from said decree be allowed and is hereby granted the above-named movers herein, to operate as a supersedeas, to the circuit court of the United States for the fifth circuit and eastern district of Louisiana, returnable on the first Monday in November, 1886, to the said circuit court, upon the said defendants and movers herein giving bond in the sum of $500 for costs, considering that there is already a bond for eighteen thousand dollars on file, upon which the property was released from seizure, reduced to $10,000 by order of court of 17 May, 1886, and which bond is still in force and ample security.

E. C. B., *Judge.*

23 *Proceedings in the United States Circuit Court.*

Hearing and Submission.

Extract from the Minute Book, November Term, 1886.

NEW ORLEANS, TUESDAY, *January* 18, 1887.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

HENRY DEVERE *et al.*
vs.
S. S. HAVERTON. } No. 11420.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Louisiana, whereupon each side offered the evidence which was offered in the court below. After being argued by the proctors for the respective parties, the cause was submitted, when the court took time to consider.

Statement of Facts, Conclusions of Law, and Reasons for Judgment. Filed Jan'y 27, 1887.

United States Circuit Court, Eastern District of Louisiana.

24

HENRY DEVERE *et al.* vs. STEAMSHIP HAVERTON. } No. 11420. In Admiralty.

This cause came on to be heard on the transcript of record, and was argued; whereupon the court finds the following as the facts in the case:

1. About half past two o'clock on the morning of the 6th of November, 1885, the steamship Haverton collided with and sunk the schooner or pilot-boat Mary and Catharine at a point off the coast of New Jersey about twenty-two nautical miles easterly from Absecon light-house and about seventy-five miles southerly from Sandy Hook. The night was dark but clear, so that there was no difficulty in seeing ships' lights properly exposed. No light-houses nor coast-lights were in sight. The wind was light and from the south southwest. The sea was smooth, except there was considerable swell from the southwest.

2. The schooner Mary and Catharine was a New York pilot-boat of $38\frac{64}{100}$ tons burden, about 64 feet long, and for some time prior to and at the time of the said collision she was cruising in above vicinity, hove to on the starboard tack under double-reefed main and fore sail, bonnets off the jib, and staysail, the staysail sheet hauled to windward and the helm lashed amidships, under a headway of about two knots an hour, leeway not appearing, on a course south by east $\frac{1}{2}$ east.

25 3. The Mary and Catharine had on board four New York pilots, a crew of one seaman, one boat-keeper, one cook, and two young men rated as boys.

The watch on deck was supposed to be made up of one pilot, Stoffreiden, and one boy, Peterson, but as a matter of fact Stoffreiden was below lying down and Paterson keeping the watch.

Paterson was 21 years old and had been following the sea for nine years.

All the rest of the people aboard were below and asleep.

4. The Mary and Catharine before and at the time of the collision carried one green and one red side-light, set and burning. Her mast-head light was aloft but in a cage, so that it made no show of light, but was ready to be used.

5. From fifteen to twenty minutes before the collision Peterson discovered the green light of the steamship Haverton on the port and lee quarter, and he thereupon called the pilot on watch from below, who came on deck and with the glass observed the green light, pronouncing the coming vessel to be a steamer, and soon after observed a white mast-head light, apparently just being hoisted up.

6. Upon the continued approach of the steamer Stoffreiden, about

ten minutes prior to the collision, took the binnacle light and showed it in the direction of the steamer. This binnacle light was in a square lantern, with glass on three sides, one a bull's-eye, and tin on the fourth, which was the door. The bull's-eye was about 3 inches in diameter. The bull's-eye light not attracting the
26 steamer's attention, Stoffreiden had a torch lighted and shown towards the steamer by swinging around, and this was kept up from about four minutes prior to and until almost the moment of collision, when the torch was put out, and the steamship ineffectually hailed.

7. The course of the Mary and Catharine was not changed nor was the condition of her sails and helm altered after the discovery of the steamship and prior to the collision, nor was the course of the steamship altered or changed during that time.

8. The steamship struck the schooner with her starboard bow, just abaft the schooner's fore rigging, with such force as to knock her around on the other tack, putting out all her lights but the the green starboard light and doing such injury that she sunk very soon, giving barely time to get out her boats for her men to escape; and as it was, for some unexplained reason, one boy was neither awakened nor called, but was left to go down with the schooner.

9. The boats from the schooner pulled in the direction the steamship had taken; but, failing to find her, made towards the land until next morning, when they were picked up by another pilot-boat and carried to New York.

10. The pilot-boat Mary and Catharine a few days previous had left New York on a business cruise, and at the time of collision was under weigh on a cruise in pursuit of employment as a pilot-boat. The New York pilot grounds extend within a radius of sixteen miles off Sandy Hook. The only station that New York pilot-boats appear to have is off Gedney's channel, to take pilots off outward-bound vessels. New York pilot-boats cruise for business
27 hundreds of miles off Sandy Hook.

11. The propeller Haverton was a British steamship, built of iron, of over 2,500 tons; was over 300 feet long and 40 feet in beam. She was thoroughly furnished with all appliances known and necessary for successful navigation and fitted up with necessary machinery, including an electric telegraph from the main bridge to the engine-room, and with steam steering and reversing apparatus, and was well officered, manned, and equipped.

12. The Haverton left the port of New York at 5 p. m. of the 5th day of November, 1885, in ballast, bound on a voyage to New Orleans. After passing Sandy Hook she took her course by compass south by west, which was the proper course for the voyage, and continued such course without interruption or deviation until 2.30 a. m. of the morning of the 6th of November, when the collision aforesaid occurred, up to which time her rate of speed was ten and a quarter knots per hour.

The Haverton was provided with two observation and lookout bridges, both elevated above the deck and running across the ship. The rear and main bridge was over the deck engine-house, and was

over and just forward of the wheel-house, and was the general and proper station of the officer of the deck.

The forward one was thirty-six feet abaft the stem, was seven feet above the main deck, and was five feet in width, with a railing around except at the steps which led down forward, and this was the station of the lookout on watch.

13. The Haverton carried the regulation green and red
28 side-lights, and a white mast-head light swung by halliards to and under the foretop-gallant-stay, about forty feet above the deck and just over the stern railing of the forward lookout bridge. The halliards hoisting this light and the guys staying it in place all run to said lookout bridge. The light itself was in a lantern with glass sides, and the whole in a cage properly secured, and weighing forty-two pounds.

14. At the time of and just prior to the collision aforesaid the second officer of the Haverton was on watch as officer of the deck, and a lookout was stationed on the lookout bridge. These two, with the man at the wheel and two sailors, one of whom was working passage out to New Orleans, constituted all of the watch on deck. One of these last-mentioned sailors had been at the wheel up to 2 o'clock, but had been relieved and was charged with no special duty. The other one was aiding in looking after the lights. The captain was in his room asleep.

15. Just prior to the collision and to the time that the Haverton was discovered by the watch on the pilot-boat, the mast-head light of the Haverton was reported out of order, smoking and the glass dim. Thereupon the second officer left the main bridge and went forward to examine the light.

He ordered it down and cleaned, and thereupon the light was lowered to the deck, some waste was procured from below, the glass cleaned, and then the light was ordered hoisted back. All the watch observed these proceedings with the light. To hoist the lamp back at least two men were necessary—one for the halliards and one
29 to attend the guys; whereupon the second officer directed the lookout to attend to the guys, saying he himself would keep the lookout. Under this direction the light was hoisted, the lookout attending to the guys, although not leaving the bridge; but the halliards fouled when the light was nearly to its place, by which time the collision occurred.

16. While the said halyards were being cleared the second officer of the Haverton discovered the Mary and Catharine by the exhibition of her flare-up light right under the bluff of the bow of the Haverton. He immediately went back to his station on the main bridge and telegraphed to the engineer to reverse the engines and go full speed astern, which order was obeyed. In the meantime the schooner had been struck, and passed astern out of sight, answering no hails, though several were made from the steamer.

17. While the said mast-head light was being looked after the seaman of the watch, who had been relieved from the wheel and charged with no particular duty, stood on the starboard side of the deck, forward of the lookout bridge, near the rail, and was more or

less looking out forward. He saw no lights nor schooner until the schooner was close under the bow of the Haverton, but he did see more or less of the operation of lowering, cleaning, and hoisting the mast-head light on the Haverton.

18. At the time and just prior to the collision there was no person on the Haverton solely charged with the duty of keeping a vigilant lookout, nor any person who kept a continuous vigilant lookout. The regular lookout, prior to his being temporarily relieved
30 by the officer of the deck, had been paying attention to the operation of regulating the mast-head light, and when the officer of the deck relieved him that officer was still charged with his deck duties and did still keep an eye to the execution of his orders in regard to the mast-head light.

19. As soon as the engines of the Haverton were reversed the captain, aroused thereby, came on deck and made ineffectual search with glasses for the schooner. He then had the helm of the steamship put hard aport, and the ship steamed slowly round in a half circle, looking for the schooner and crew, this until the steamship's head came around to the north, when the helm was put hard astarboard until the ship's head came around to south-southeast. Still seeing and hearing nothing of the schooner and crew, the captain concluded that no damage had been done and resumed his course. By the collision the Haverton was not damaged so much as by a discernible mark.

20. The Haverton was in fault in not having and maintaining a vigilant lookout, and because her officer of the deck absented himself for so long a time prior to the collision from the main bridge, where he could have exercised vigilance and could have communicated instantly with the engineer and the helmsman.

21. The schooner Mary and Catharine was in fault in not carrying a white light at her mast-head, visible all round the horizon, and in not exhibiting a flare-up light or flare-up lights at short intervals while she was cruising, as hereinbefore described, and she was also in fault in not taking any precautions by way of unlashing her helm and calling the watch below when it became
31 apparent, as it did, that she was not observed by the Haverton and that a collision was imminent.

And all of the said faults of both vessels contributed to the collision, because it cannot be said under the evidence that in the absence of any one of them the collision would not have been avoided.

22. The value of the schooner Mary and Catharine at the time she was lost was five thousand and twenty-five dollars, and of the property and personal effects at the time on board of her (all of which were a total loss) were of the value of one thousand and thirty-two dollars. The libelants were the owners of said schooner, and are authorized to sue for and recover for said personal effects.

And the court finds as conclusions of law:

1. That both vessels were in fault, as described in the 20th and 21st findings of fact aforesaid, and the damages resulting from the aforedescribed collison should be divided.

2. The libelants are entitled to a decree for the one-half the

value of the said schooner and for one-half of the value of the property and effects thereon, as found in the 22d finding of facts, to wit, for the sum of three thousand and twenty-eight & $\frac{50}{100}$ dollars ($3,028.50).

3. The libelants should recover from the claimants the costs of the district court, and should be condemned to pay the costs of this court.

Jan'y 27th, 1887.

(Signed) DON A. PARDEE, *Judge.*

32 *Some Reasons and Observations.*

In explanation of the foregoing findings it is proper to say that I have included some apparently irrelevant details attending the collision aforesaid because proctors requested findings on those points and seemed to lay stress upon them.

That it was the Haverton that collided with and sunk the pilot-boat I can have no doubt, under the circumstances of the case. The time, the place, the character of the schooner, the matter of lights, and many other incidents appearing in the evidence are conclusive to my mind. It would indeed be a singular fact if at the same precise time, in the same neighborhood, there were two New York pilot-boats cruising without lights and adequate watches in a happy-go-lucky manner, and each at the same time should collide with a large steamship having defective lights and no vigilant lookout, and with the same result in each case, a ghostly schooner under the bow, immediately disappearing in the darkness and apparently from the face of the waters.

I have made no point on the Haverton's defective mast-head light as a fault, because the presence or absence of the mast-head light did not affect the ability of the watch on the pilot-boat to discover the Haverton in season.

The said light was certainly the center of observation on the Haverton, and naturally so—the unusual operation of taking it down and cleaning it would naturally relieve the tedium and routine of the mid-watch at a place where no one was anticipating danger.

33 The careless shape in which the pilots put their boat and went below to sleep shows how reckless of danger such men become—in the way of ships, sails set, helm lashed, no lights but side-lights, which do not show astern, and a boy (in their own estimation) on watch.

The whole case leaves an impression on my mind that the witnesses are mistaken as to the time elapsing between the discovery of the Haverton and the collision and between the collision and the sinking of the pilot-boat.

The Haverton's rate of speed was 10¼ knots, and that of the pilot-boat, in the same general direction, 2 knots; so that if Peterson saw the Haverton 20 minutes before she came up she must have been nearly three miles of, and Stoffreiden coming at once on deck could hardly have seen at that time and distance a point or two between

her masts; and it seems to me that in that time good seamen (as all pilots ought to be) would have called some of the watch below and made some preparations for handling the schooner in an emergency.

And if there was a period of 15 minutes after the collision before the schooner sunk, it would seem that there would have been time to call all hands from below and have made some signals to the Haverton from the stock on board the schooner, and in that length of time the Haverton should not have lost all sight of the schooner if she had been floating.

If we take it that Peterson did not discover the Haverton until she was near enough for time to plainly see her green light,
34 and that Stoffreiden was asleep when called, and came hastily on deck, and that the collision immediately followed, sinking the schooner within two or three minutes, all the surroundings of the case are harmonized, and we can understand why the schooner, having no light astern, was not sooner seen, why she was not put under control, why she was deserted so speedily, leaving a man asleep on board, and why the Haverton saw no more of her.

Under the facts as found, there can be no doubt about the fault of the Haverton. She was bound to have a vigilant lookout and an efficient officer of the deck. When the two were merged she had about half of each, and that was at the critical time for the pilot-boat.

That the pilot-boat should have been put under control when the Haverton was found to be approaching, and not left so that she could not be speedily handled in an emergency, seems equally clear. All vessels are required to use reasonable diligence to avoid collisions.

In cases of collision a fault of one vessel will not excuse any want of care or diligence in another to prevent damage to herself.

"In a cause of collision the plaintiff, in order to recover entire damages, must prove both care on his own part and the want of it on the part of the defendant."

See the Clara, 102 U. S., 202.

As to the leaving the helm lashed in cases like the present, see The Transit, 3 Benedict, 192, and also 2d Ed. Marsden on
35 Collisions, p. 366.

In an almost identical case, so far as the cruising of the pilot-boat is concerned, a pilot-boat was held by the Supreme Court to be on a cruise in pursuit of employment as a pilot-boat, and as such, under the old rule, required to carry a mast-head light.

See the City of Washington, 92 U. S., 31.

It is true that in that case the omission to carry such a light was excused, but it was on the ground that, as the pilot-boat was seen by the approaching vessel in time, such fault did not contribute to the collision.

The New York pilot-boats do not appear to have fixed and definite stations, but they cruise hundreds of miles off the port of New York for business. When such pilot-boat is so cruising, looking or

waiting for ships wanting pilots, I think it clear that she is a "pilot vessel engaged on her station on pilotage duty" within the meaning of article 9 of the act of Congress approved March 3d, 1885, chap. 354, 23 vol., Statutes at Large.

In commenting on the English rule, which is identical with ours, Marsden says.

"It is submitted that a pilot vessel is on her station on pilotage duty within the meaning of this article and required to carry the white mast-head light alone, not only whilst actually engaged in putting a pilot on board a ship but whilst she is cruising on her station, either for the purpose of supplying pilots or taking them out of ships."

Marsden on Collisions p. 334.

36 In all the cases of collision that have come under my observation where vessels have been properly excused for not carrying all the regulation lights the excuse has been on the ground that as the delinquent vessel was seen in time (or conclusively could not or would not have been seen) notwithstanding the delinquency in lights, such delinquency did not contribute to the collision.

If in the present case the watch on the schooner had not discovered (as the witnesses say they did) the Haverton long before the collision, but had first discovered her close by (as I am inclined to think was the real fact), and the Haverton had proved a vigilant lookout, the learned proctors for libellants in this case would no doubt (and with strong grounds) have claimed that the Haverton was grossly in fault for not keeping constantly displayed a bright white light as high above her deck as the beam of the ship, sufficiently strong to be seen in a clear dark night a distance of five miles; but as their case is proved no fault is claimed on that score, for, except as it distracted the attention of the watch on deck, it cut no figure in the collision.

(Signed) DON A PARDEE, *Judge.*

Decree. Entered and Filed 28 *Jan'y*, 1887.

Circuit Court of the United States, Eastern District of Louisiana.

37 HENRY DEVERE *et al.* *vs.* STEAMSHIP HAVERTON. } No. 11420.

In accordance with the finding of facts and conclusion of law filed in this cause—

It is ordered, adjudged, and decreed that libellants do have and recover of the Steamship Haverton, defendant herein, the sum of three thousand and twenty-eight dollars and fifty cents, with five per cent. interest thereon from November 6th, 1885, until paid, and costs of the district court, but the libellants are to pay the costs of the circuit court, including costs of transcript.

And the said steamship having been released on bond and re-

stored to the owners, it is ordered, adjudged, and decreed that the commercial firm of Wm. Milburn & Co. and William Milburn, John D. Milburn, and William Milburn, Jr., members composing said firm and owners of said steamship, as principals on said release bond, and W. G. Coyle, of New Orleans, as surety thereon, be, and they are hereby, condemned *in solido* to pay to libellants the said sum of three thousand and twenty-eight dollars and fifty cents, with interest on the same, at the rate of five per cent., from November 6, 1885, until paid, and all costs of the district court.

Jan'y 28, 1887.

(Signed) DON A. PARDEE, *Judge.*

38 *Appeal. Entered and Filed 11th March,* 1887.

In U. S. Circuit Court, Eastern District of Louisiana.

HENRY DEVERE *et al.*
vs.
BRITISH STEAMSHIP HAVERTON. } No. 11420.

Upon motion of Rouse & Grant, proctors for libellants—Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell, deceased; Jacob M. Heath, Oscar Stoffreiden, Frederick Ryerson, and James J. Devere—suggesting that said libellants believe that there is *the* error to their prejudice in the final decree made by this honorable court in said above entitled and numbered cause the 28th day of January, 1887, and that they desire to appeal therefrom to the Supreme Court of the United States, it is ordered that an appeal from said decree be granted said libellants to the Supreme Court of the United States, returnable to said Court on the second Monday of October next, upon their giving bond, with solvent surety, in the sum of five hundred dollars, conditioned as the law directs.

March 11th, 1887.

(Signed) DON A. PARDEE, *Judge.*

Bond for Appeal. Filed April 2, 1887.

39 UNITED STATES OF AMERICA:

Know all men by these presents that we, Henry Devere; Catharine J. Tewell, executrix of the last will and testament of Timothy Tewell, deceased; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere, as principals, and William Grant, as surety, are held and firmly bound, jointly and severally, unto Wm. Milburn & Co., William Milburn, John D. Milburn, William Milburn, Jr., and W. G. Coyle in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Wm. Milburn & Co., William Milburn, John D. Milburn, William Milburn, Jr., and W. G. Coyle, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, execu-

tors, and administrators, firmly by these presents. Sealed with our seals and dated the second day of April, in the year of our Lord eighteen hundred and eighty-seven.

Whereas the said Henry Devere; Catharine J. Tewell, executrix as aforesaid; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere having heretofore, to wit, on the eleventh day of March, 1887, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 28th day of January, 1887, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Henry Devere *et al. vs.* British Steamship Haverton, whereof said Wm. Milburn & Co. are claimants, No. 11420 of the docket thereof:

40 Now, the condition of the above obligation is that if the above-bounden Henry Devere; Catharine J. Tewell, executrix; Oscar Stoffreiden, Jacob M. Heath, Frederick Ryerson, and James J. Devere shall prosecute their said appeal to effect and shall answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

(Signed) HENRY DEVERE, [L. S.]
CATHARINE J. TEWELL, [L. S.]
Executrix.
OSCAR STOFFREIDEN, [L. S.]
JACOB M. HEATH, [L. S.]
FREDERICK RYERSON, [L. S.]
JAMES J. DEVERE, [L. S.]
All by ROUSE & GRANT,
Their Proctors.
WILLIAM GRANT. [L. S.]

Approved.

(Signed) DON A. PARDEE, *Judge.*

41 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 40 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Henry Devere *et als. vs.* Steamship Haverton, No. 11420 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 2 day of July, A. D. 1887.

E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed

to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 2 day of July, A. D. 1887.

DON A. PARDEE, *Judge.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 350. Henry Devere; Catherine J. Tewell, executrix of Timothy Tewell, dec'd; Oscar Stoffreiden, *et al.*, &c., appellants, *vs.* The Steamship "Haverton," Wm. D. Milburn & Co., owners. Filed July 14, 1887.

[redacted]

Supreme Court of the United States.

IN ADMIRALTY.

HENRY DEVERE, CATHARINE J. TEWELL, Executrix of TIMOTHY TEWELL, Deceased; OSCAR STOFFREIDEN, *et al.*, Appellants, *vs.* The Steamship "HAVERTON," WILLIAM D. MILLBURN & Co., Owners, Appellees.	Appeal from the Decree of the Circuit Court of the United States for the Eastern District of Louisiana.

Brief of James Parker, Esq., for Appellants.

The Facts

As found by the Circuit Court are as follows:

1. About half past two o'clock on the morning of the 6th of November, 1885, the steamship "Haverton" collided with and sunk the schooner or pilot-boat "Mary and Catharine" at a point off the coast of New Jersey, about *Twenty-two nautical miles Easterly from Absecon Lighthouse*, and about *Seventy-five miles Southerly from Sandy Hook*. The night was dark, but clear, so that there was no difficulty in seeing ships' lights, properly exposed—no lighthouses were in sight. The wind was light, and from the South south-west. The sea was smooth, except there was considerable swell from the South-west.

2. The Schooner "Mary and Catharine" was a New York pilot-boat of $38\frac{64}{100}$ tons burden, about 64 feet long, *and for some time prior to and at the time of said collision* she was *cruising in above vicinity*, hove to on starboard tack under double-reefed main and foresail, bonnets off the jib and staysail, the staysail sheet hauled to windward, and the helm lashed amidship under a headway of about two knots an hour, leeway not appearing, on a course South by East, $\frac{1}{2}$ East.

3. The "Mary and Catharine" had on board four New York pilots, a crew of one seaman, one boat-keeper, one cook, and two young men rated as boys.

The watch on deck was supposed to be made up of one pilot, Stoffreiden, and one boy, Peterson; but, as a matter of fact, Stoffreiden was below lying down, and Peterson keeping the watch.

Peterson was 21 years old, and had been following the sea for nine years.

All the rest of the people were below, and asleep.

4. The "Mary and Catharine," before and at the time of the collision, *carried one green and one red side-light set and burning.* Her mast head light was also aloft, but in a cage, so that it made no show of light, but was ready to be used.

5. From *fifteen to twenty minutes before the collision Peterson discovered the green light of the steamship "Haverton" on the port and lee quarter, and he thereupon called* the pilot on watch from below, who *came on deck*, and *with the glass observed the green light*, pronouncing the coming vessel to be a steamer, and soon after observed a white mast-head light, apparently just being hoisted up.

6. Upon the continued approach of the steamer, Stoffreiden, *about ten minutes' prior to the collision, took the binnacle light, and showed it in the direction of the steamer.* This binnacle light was in a square lantern, with glass on three sides, one a bull's-eye, and tin on the fourth, which was the door. The bull's-eye was about three inches in diameter.

The bull's eye, not attracting the steamer's attention, Stoffreiden had a torch lighted, and shown towards the steamer by swinging around, and this was kept up from about five minutes prior to, and until almost the moment of the collision, when the torch was put out, and the steamship ineffectually hailed.

7. *The course of the "Mary and Catharine" was not changed, nor was the condition of her sails and helm altered after the discovery of the steamship, and prior to the collision, nor was the course of the steamship altered or changed during that time.*

8. The steamship struck the schooner with her starboard bow, just abaft the schooner's fore-rigging, with such force as to knock her around on the other tack, putting out all her lights but the green starboard light, and doing such injury that she sank very soon, giving barely time to get out her boats for her men to escape; and, as it was, for some unexplained reason, one boy was neither awakened nor called, but left to go down with the schooner. (In making this last statement the learned Circuit Judge has overlooked testimony that the young man was called, but either went to sleep again or may have remained below to look after his effects too long, and been caught.—J. P.)

9. The boats from the schooner pulled in the direction the steamship had taken; but, failing to find her, made towards the land until next morning, when they were picked up by another pilotboat, and carried to New York.

10. The pilot-boat "Mary and Catharine," a few days previous, had left New York on a business cruise, and at the time of collision was under weigh on a cruise in pursuit of employment as a pilot-boat.

The New York pilot grounds extend within a radius of sixteen miles off Sandy Hook. The only station that New York pilot-boats appear to have is off Gedney's Channel, to take pilots off outward bound vessels. New York pilot-boats cruise for business hundreds of miles off Sandy Hook.

11. The propeller "Haverton" was a British steamship, built of iron, of 2,500 tons, was over 300 feet long, and 40 in beam. She was thoroughly furnished with all appliances known and necessary for successful navigation, and fitted up with necessary machinery, including an electric telegraph from the main bridge to the engine-room, and with steam steering and reversing apparatus, and was well officered, manned and equipped.

12. The "Haverton" left the port of New York at 5 P. M. of the 3d day of November, 1885, in ballast, bound on a voyage to New Orleans. After passing Sandy Hook she took her course

by compass South by West, which was the proper course for the voyage, and continued such course without interruption or deviation until 2.30 A. M. of the morning of the 6th of November, when the collision aforementioned occurred, up to which time her rate of speed was ten and a quarter knots per hour.

13. The "Haverton" was provided with two observation and lookout bridges, both elevated above the deck and running across the ship. The rear and main bridge was over the deck engine-house, and was over and just forward of the wheel-house, and was the general and proper station of the officer of the deck. The forward one (bridge) was thirty-six feet abaft the stem, was seven feet above the main deck, with a railing around except at the steps which led down forward, and this was the station of the lookout on watch.

(*Note.*—I desire to add here that (as shown by the evidence taken in the cause) the distance between these two bridges was about 75 feet, so that the officer of the deck when on the forward bridge was that distance away from his helmsman; and, in order to communicate with his engineer, would be required to go down the steps of the forward bridge seven feet, run aft about eighty feet and up another steps some fifteen feet to the (electric) telegraph spoken of in finding 12, a total distance of about one hundred feet.—J. P.)

14. The "Haverton" carried the regulation green and red side-lights; and a white masthead light swung by halliards to and under the foretop gallant stay, about forty feet above the deck and just over the stern railing of the forward lookout bridge. The halliards hoisting this light and the guys staying it in place all ran to said lookout bridge. The light itself was in a lantern with glass sides, and the whole in a cage properly secured, and weighing forty-two pounds.

15. At the time of and just prior to the collision aforesaid the second officer of the "Haverton" was on watch as officer of the deck (he was on the *main bridge, see 16 below*, J. P.), and a lookout was stationed on the lookout bridge. These two, with the man at the wheel and two sailors, one of whom was working passage out to New Orleans, constituted all the watch on deck. One of these last mentioned sailors had been at the wheel up to 2 o'clock, but had been relieved and was charged with no special duty. The other one was aiding in looking after the lights. The captain was in his room asleep.

16. *Just prior to the collision and to the time that the "Haverton"* was *discovered by the watch on the pilotboat*, the *mast head light of the "Haverton" was reported out of order, smoking, and the glass (? light) dim. Thereupon the second officer left the main bridge* (his proper station, J. P.) *and went forward to examine the light.*

He ordered it down and cleaned, and thereupon the light was lowered to the deck; some waste was procured from below, the glass cleaned, and then the light was ordered hoisted back. To hoist the lamp back, at least *two men were necessary, one for the halliards and one to attend the guys;* whereupon the second officer *directed the lookout to attend to the guys,* saying *he himself would keep the lookout.* Under this direction the light was hoisted, the *lookout attending to the guys*, although not leaving the bridge; but the halliards fouled when the light was nearly to its place, by which time the collision occurred.

17. While the said halliards were being cleared, the second officer of the "Haverton" discovered the "Mary and Catherine" by the exhibition of her flare-up light right under the bluff of the bow of the "Haverton." *He immediately went back to his station on the main bridge* and telegraphed to the engineer to reverse the engines and go full speed astern, which order was obeyed. In the meantime the schooner had been struck and passed astern, answering no hail, though several were made from the steamer.

18. While the said mast head light was being looked after the seaman of the watch, who had been relieved from the wheel, and charged with no particular duty, stood on the starboard side of the deck forward of the lookout bridge, near the rail, and was, more or less, looking out forward. He saw no lights nor schooner until the schooner was close under the bow of the "Haverton," but he *did see more or less of the operation of lowering, cleaning and hoisting the mast head light on the "Haverton."*

19. *At the time and just prior to the collision there was no person on the "Haverton" solely charged with the duty of keeping a vigilant lookout, nor any person who kept a continuous vigilant lookout. The regular lookout, prior to his being temporarily relieved by the officer of the deck, had been paying attention to the operation of regulating the mast head light, and when the officer of the deck relieved him, that officer* was still

charged with his deck duties, and did still keep an eye to the execution of his orders in regard to the mast head light.

20. (This finding is omitted as not at all material to the issue).

21. *The "Haverton" was in fault in not having and maintaining a vigilant lookout, and because her officer of the deck absented himself for so long a time prior to the collision from the main bridge, where he could have exercised vigilance and could have communicated instantly with the engineer and the helmsman.*

22. *The schooner "Mary and Catharine" was in fault in not carrying a white light at her masthead visible all round the horizon*, and in *not exhibiting a flare-up light, or flare-up lights at short intervals, while she was cruising, as hereinbefore described ;* and she was also in fault in not taking any precautions by way of unlashing her helm and calling the watch below when it became apparent, as it did, that she was not observed by the "Haverton" and that a collision was imminent. And all of the said faults by both vessels, contributed to the collision because it cannot be said, under the evidence, that in the absence of any one of them, the collision would not have been avoided.

23. The value of the schooner "Mary and Catherine," at the time she was lost was five thousand and twenty-five dollars, and of the property and personal effects at the time on board of her (all of which were a total loss) were of the value of one thousand and thirty-two dollars. The libellants were the owners of said schooner, and are authorized to sue for and recover for said personal effects.

The amount claimed in the libel is:

1. For the value of the pilot-boat $10,000
2. " " " " " property, &c. 3,000

I have been careful to make the statement of facts required by the rules of this Court, in the language of the Court below, because it is from the facts as found, and not as stated by counsel, that this Court must draw its conclusions of law, but I have italicised some parts of these findings because they seem to me to be the essential facts upon which I ask a reversal of the decree of the Court below in so far as it declares the pilotboat to have been in default.

And the Court found as conclusions of law—

1. That both vessels were in fault, as described in the 20th and 21st findings of fact (so in the record, but should be "21st and 22d," &c., J. P.) aforesaid, and the damages resulting from the above described collision should be divided.

2. The libellants are entitled to a decree for one-half the value of the said schooner, and for one-half of the value of the property and effects thereon, as found in the 22d finding of fact (should be 23d, J. P.), to wit, for the sum of $3,028.59.

3 The libellants should recover from the claimant the costs of the District Court, and should be condemned to pay the costs of this Court.

From this decree of the Circuit Court the libellants have appealed to this Court.

POINTS.

I.

It is not worth while to waste the time of this Court in the maintenance of the propositions laid down in the 20th finding, which is conclusive as against the "Haverton."

This Court has often held that steamers are "required to "have a constant and vigilant lookout, a person or persons, "of suitable experience, properly stationed on the vessel, and "actually and vigilantly employed in the performance of that "duty"

The Genessee Chief *vs.* Fitzhugh, 12 How., 443 (13 L. Ed., 1058).

The Catharine *vs.* Dickinson, 17 How., 170 (15 L. Ed., 233).

Chamberlain *vs.* Ward, 21 How., 548 (16 L. Ed, 211–219.)

N. Y. & Balto. Fr. Co. *vs.* Phil. &c., Nav. Co., 22 How., 461 (16 L. Ed., 397).

Haney *vs.* Balto. St Pac. Co., 23 How., 287 (16 L. Ed., 562).

Whitridge *vs.* Diel, 23 How., 448 (16 L. Ed., 581).

"The Colorado," 91 U. S., 692 (23 L. Ed., 379).

"The Ottawa," 3 Wall., 269 (18 L. Ed., 165).

II.

In the 21st finding of fact, the Court below affirms it to have been the *duty of the pilot-boat to "carry a white light at her "masthead, visible all round the horizon,"* and "*to exhibit a flare-up or flare up lights, at short intervals, while she was cruising, as described in the 10th finding of fact,*" and also that it was :

"The duty of the pilotboat to unlash her helm and call the "the watch below when it became apparent, as it did, that the "pilotboat was not observed by the "Haverton," and that a "collision was imminent"; and the 1st conclusion of law finds the pilotboat in fault in both particulars.

I proceed to consider both of these propositions in the order named, and maintain :

THE PILOT-BOAT WAS NOT REQUIRED BY LAW OR CUSTOM OF THE SEA TO CARRY A WHITE MASTHEAD LIGHT, AND TO EXHIBIT FLARE UP LIGHTS WHILE CRUISING, BUT WAS, ON THE CONTRARY, REQUIRED BY LAW TO CARRY ONLY THE LIGHTS REQUIRED BY OTHER SAILING VESSELS, VIZ. ; THE ORDINARY RED AND GREEN SIDE-LIGHTS, WHICH THE 4TH FINDING OF FACT SHOWS THAT SHE DID CARRY.

III.

THE PILOT-BOAT WAS NOT REQUIRED, BUT, ON THE CONTRARY, WAS PROHIBITED FROM CARRYING A MASTHEAD LIGHT, VISIBLE ALL ROUND THE HORIZON, UNDER THE CIRCUMSTANCES OF THIS CASE, BUT WAS REQUIRED TO CARRY ONLY THE ORDINARY SIDE-LIGHTS, AND TO EXHIBIT A WHITE LIGHT, OR FLARE-UP LIGHT, TO A VESSEL OVERTAKING HER.

The lights which pilot vessels are required to carry are given in Art. 9 of the act affirmed March 3, 1885, 23 U. S. Stat. at Large, Chap. 354, which is as follows :

"Art. 9. A pilot vessel when engaged on her station on "pilotage duty shall not carry the lights required for other "vessels, but shall carry a white light at the masthead, visible

"all round the horizion, and shall also exhibit a flare-up light "or flare-up lights at short intervals, which shall never exceed "fifteen minutes.

"A pilot vessel when not engaged on her station on pilot-"age duty, shall carry lights similar to those of other ships."

I have diligently searched the reports, and, so far as I have been able to learn, the particular question arising under this article of the rules has never before been raised.

If this were a case arising in the waters of Great Britain or Europe, there would be little trouble in giving to this rule a proper construction. In those waters the pilot-boats all have a well and narrowly defined station, beyond the limits of which they never go; and so long as a pilot whom she desires to furnish to a vessel bound to the port remains on board, the pilot-boat may properly be said to be "*engaged on her station on pilotage duty.*" She is so situated that her character as a pilot-boat should be constantly and continuously declared; but when we come to consider the work in which the pilot-boats of New York are engaged, the case is entirely different.

Primarily the word "station" always implies confinement within certain limits.

Webster's definition:

"*Station.*" The spot or place where one is appointed to remain for a time. To station ships on the coast of Africa or in the West Indies." Nautically, the same thing is meant.

Thus, in the Naval Register, we have a list of vessels belonging to the "North Atlantic Station," "The South Atlantic Station," "The Pacific Station," "The Asiatic Station," "The European Station."

A ship on either of these stations is one whose duties are defined by the rules, limits and necessities of that station; and, if perchance, she goes, or is sent or called to another station, would not, while there, be bound by the rules of the old station, but by that of the new one in which she might be found.

A ship "cruising," on the other hand, is one which is free from all the restrictions or duties of these several stations. She is a rover on the ocean. Now apply these definitions to this case.

The 10th finding of fact of the Circuit Court is as follows, viz:

"The New York pilot grounds extend within a radius of "sixteen miles off Sandy Hook.

"The only station that New York pilot-boats appear to have "is off Gedney's Channel, to take pilots off outward bound "vessels. New York pilot-boats cruise for business hundreds "of miles off Sandy Hook;" and

By the 1st finding of fact, the Circuit Court locates the collision at a place "about seventy-five miles southerly from Sandy "Hook"—that is, nearly sixty miles from "*the New York pilot-grounds*," and the "only station the *New York pilot-boats appear to have*."

The language of the Ninth Article is inclusive, and not disjunctive.

"A pilot vessel, when engaged on her station on pilotage "duty, shall *not* carry the lights required for other vessels, and "*shall* carry," &c., &c.

1st. The pilot vessel must be on her station; and

2d. Engaged on pilotage duty: in order to make the prohibition of the lights required for other vessels, and the requirement of the masthead light and flare-up light or lights, applicable to such pilot vessel.

And if she is *not* "engaged on her station, on pilotage duty," then the last clause of the article applies, viz:

"A pilot vessel when *not* engaged on her station on pilotage "duty, *shall* carry lights similar to those of other ships." And this was exactly what this pilot boat did.

The Circuit Judge refers to the case of the "City of Washington," 92 U. S., 31 (23 L. Ed., 600), and styles it an almost identical case. I perceive no resemblance whatever, except that a steamer and a pilotboat were involved.

That collision occurred in 1871, and the rule applicable was in these words, "Sailing pilot vessels shall NOT carry the lights "required for other sailing vessels, but *shall* carry *a white light* "*at the masthead visible all around the horizon, and shall also* "*exhibit a flare up light every fifteen minutes*" (13 U. S. Stat at Large, Chap. 69, p. 59).

Here was a positive requirement of a certain light without the limitation, "on her station, engaged on pilotage duty," and yet in that case the Court held that the failure to carry such light was not a fault in the schooner, because, although the pilot vessel was engaged in pilotage duty, *i. e.*, putting a pilot on that steamer, the evidence was that the steamship well knew the character of the pilot vessel, and was dealing with her

as such. It was, in that case, well said by Mr. Justice Clifford, in delivering the opinion of the Court, that

"Sailing pilotboats are required to carry the masthead "light, besides displaying the flare-up light, that they may be "seen by approaching vessels, and *that the approaching vessel "may not be misled in respect to the character of the vessel "showing such a light*": that is, may know her to be a pilot-boat. Applying this language to the present law and its construction is easy. So long as the pilot vessel is on her station, engaged on pilotage duty, she is prohibited from carrying the lights required for other vessels, and instead required to carry a bright masthead light, visible all around the horizon, and to exhibit a flare-up light or lights at interva's, in order that an approaching vessel, desiring a pilot, may know that the pilot vessel is at hand, and that such vessel may not be misled in respect to the character of the (pilot) vessel showing such a light. But (as the Circuit Judge somewhat inaptly says,) the "City of Washington") held that the omission of the masthead light in that case was held not to be a fault, because it did not contribute to bring about the collision, which ~~may be~~ (or) due entirely to other causes. The Circuit Judge also cites Marsden on Collisions, p. 334, and finds in his citation some warrant for his statement that "when such pilotboat is *cruising*, waiting for ships wantt "ing pilots, I think it clear that she is a 'pilot vessel engaged "on her station on pilotage duty,' within the meaning of Art. 9, &c."

But in that citation Marsden is careful to confine the expression of his opinion to the case of "a pilot vessel *on her station* "either for the purpose of supplying vessels or taking them "out of ships."

His Honor, Mr. Justice Blatchford (when District Judge) considered the subject of pilot-boats' lights very carefully in the case of

"The Wanata," 4 Benedict, 310.

In that case it was claimed that merely because the law was absolute—without qualification of time or place—that "sailing "pilot-boats shall ~~that~~ (not) carry the lights required for other vessels, "but *shall* carry the bright masthead light," &c., it applied to a pilot boat under all circumstances, at anchor as well as when under way and engaged about her business. But Judge Blatchford's reasoning in that opinion effectually destroys such a contention; and his opinion was confirmed by the Circuit Court, and

by this Court on appeal, in a careful opinion by Mr. Justice Clifford.

The Wanata, 5 Otto, 600–618 (24 L. Ed., 461).

In the report of the International Marine Conference lately held in Washington City, last year, vol. 1, pp. 633–647, this whole article is discussed, and as to the meaning of these words "engaged on her station on pilotage duty," the best explanation was given by Captain Brisbee (China's representative) in this language (p. 647): "A pilot vessel is engaged on her station on "pilotage duty when *she is attempting to attract the attention "of a vessel on board of which she wishes to put a pilot, and only then.*" This pilot-boat was not desirous of putting a pilot on board the "Haverton," which vessel was coming from New York; and, having but a few hours before discharged her pilot into the pilot-boat on her station off Gedney's Channel, it would have been utterly immaterial to the "Haverton" if the "Mary and Catharine" had undertaken to appear to her in the character of a pilot-boat.

IV.

THE "HAVERTON" WAS AN "OVERTAKING SHIP," AND BOUND, UNDER ART. 20, TO KEEP OUT OF THE WAY OF THE PILOT BOAT, WHICH WAS THE "OVERTAKEN SHIP"; AND UNDER THE CIRCUMSTANCES OF THE CASE THE PILOT-BOAT OWED ONLY ONE DUTY TO THE "HAVERTON," WHICH DUTY IS SET FORTH IN

Art. 11. "A ship which is being overtaken by another shall show from her stern to such last mentioned ship a white light, or a flare-up light."

This duty the pilot-boat performed by doing both, as is found by the Circuit Court in the 6th finding of fact. "Stoffreiden "(the pilot) ten minutes prior to the collision, took the bin-"nacle light" (with its bull's eye) "and showed it in the direc-"tion of the steamer. The bull's-eye light not attracting the "steamer's attention, Stoffreiden had a torch lighted and shown "towards the steamer by swinging around, and this was kept up "from about four minutes prior to and until almost the moment "of collision, when the torch was put out, and the steamer in-"effectually hailed."

V.

"IT WAS THE DUTY OF THE PILOT-BOAT TO KEEP HER COURSE, WHICH DUTY SHE ALSO PERFORMED."

The learned Circuit Judge holds the pilot-boat in fault because she did not unlash her helm and call the watch below.

In what way a failure to do this contributed to the collision, I am utterly at a loss to see, because under Art. 22, "Where by "the above rules one of two ships is to keep out of the way, the "other shall keep her course."

The 7th finding of fact of the learned Circuit Judge is as follows:

"The course of the 'Mary and Catharine' was not changed, "nor was the condition of her sails and helm altered after the "discovery of the steamship, and prior to the collision."

Inasmuch as the steamer was the overtaking vessel, and, as such, clearly bound to keep out of the way of the pilot-boat, it is certainly clear that under the requirements of Article 22, the pilot-boat was bound to keep her course; and this the learned Circuit Judge finds that she did; and, yet, he holds her in fault for not being more fully prepared than he assumes she was (for it is a mere assumption), to violate Art. 22. *If all hands had been called, and been on deck at the time of the collision, the pilot-boat could not have changed her course without the risk of having such change attributed as a fault, in case a collision took place.*

In support of this finding, the Circuit Judge cites:

The Transit, 3 Ben., 192.

That was a case entirely different from the present one. The "Transit," a schooner, was heading southwest, and saw the pilot-boat "A. T. Stewart" lying to, with her head to the northward, with a reef in her mainsail, her foresail furled, and one bonnet out of her jib, and her helm lashed to starboard. The pilot-boat *was luffing to and then falling off*, so that at one minute she was heading for the port quarter of the "Transit," and then when she luffed up she would shoot across the bows of the "Transit." Finally, when the two vessels were about eighty yards apart, *the pilot-boat took a sharp luff across the bows of the "Transit," and the collision occurred.*

Under these circumstances, Mr. Justice Blatchford, then the District Judge, held—and most properly held—that "It was

"the duty of the 'Transit,' because she had the wind free, "although she had it on the starboard side, to keep out of the "way of the pilot-boat because the latter, although she had the "wind on the port side, was close hauled. But it was *the duty* "*of the pilot-boat to keep her course in order to allow the* "*'Transit' to keep out of her way.* But *she kept no course* "*whatever*; * * her helm should have been unlashed, and "she *should have been kept* steady on a fixed course, and *not* "*have been suffered to luff and fall off.*"

Now, it was for the *changing of her course*, which change plainly contributed to the collision (and *not* for failure to unlash the helm) for which the pilot-boat in that case was also held in fault.

And the question may be pertinently asked how that case of the "Transit," wherein a pilot-boat was held in fault for NOT keeping her course, can be cited as authority for finding our pilot-boat in fault, because she *did*—*as the learned Judge expressly finds she did*—keep her course.

Plainly, the "Mary and Catharine," had no right in this case, under any circumstances, to change her course, except as a last resort, to avoid a disaster; and then, if the disaster had followed, and the change of course had in any wise contributed, only the defence that it had been done *in extremis* would have excused her from being declared in fault.

VI.

THIS COLLISION WAS THE PLAIN RESULT OF THE NEGLECT OF THE STEAMER:

1st. TO KEEP A LOOKOUT.

2d. TO HAVE A PROPER OFFICER IN CHARGE OF THE DECK.

The Circuit Court finds that she had neither.

If she had had a proper lookout she could not have failed to see the lights shown towards her by the pilot-boat in time.

If, when this light *was* discovered, the officer of the deck had been at his post on the after bridge where he could communicate promptly with the helmsman at the wheel, a very slight starboarding of the helm would have sufficed so to change the

steamer's course to port sufficiently for her to have passed the schooner at a safe distance, and the collision would have been avoided, because, as it was, only the bluff of the steamer's starboard bow struck the pilot boat abreast of the latter's foremast. (See 8th Finding of Facts.)

VII.

The pilot-boat was not required to carry or exhibit any other lights than those she did carry and exhibit; and no fault can be attributed to her by reason of failure to exhibit a masthead light.

VIII.

So much of the decree of the Circuit Court as finds the pilot-boat "Mary and Catharine" in fault, should be reversed, and a decree affirming the steamer "Haverton" to be wholly and solely in fault, should be given, with costs of all Courts to the libellants and appellants.

JAMES PARKER,
Counsel for Libellants and Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 60. In Admiralty.

HENRY DEVERE ET AL., LIBELLANTS AND APPELLANTS,

vs.

THE STEAMSHIP HAVERTON, ETC.

APPEAL FROM THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

Reply to Respondent's Brief.

JAMES PARKER,
Counsel for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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APPEAL FROM THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

Reply to Respondent's Brief.

JURISDICTION.

The cases *Hilton* vs. *Dickinson*, 108 U. S., 165, and *Dows* vs. *Johnson*, 110 U. S., 223, have no application. The first was a case in which the whole found in dispute was $3,000, and the court below decided that the plaintiff was entitled only to one-half of it. *Dows* vs. *Johnson* simply applies the rule laid down in *Hilton* vs. *Dickinson*.

The case at bar very closely resembles that of *Irvine et al.* vs. *The "Hesper," etc.*, 122 U. S., 256.

That was a case of salvage in which the value of the salved property was $106,500, as found by the district court.

The libel prayed that the court should "award such a sum of money, proportioned to the value, etc., as a compensation for the said salvage as the court might deem meet and reasonable."

The district court awarded $8,000. From this award both parties appealed to the circuit court, but the claimants failed to perfect their appeal.

The circuit court awarded only $4,200. From this the libellant appealed to this Court.

Thus the apparent amount in dispute in this Court was only $3,800; but this Court, acting upon its oft-asserted principle that "an appeal in admiralty vacates altogether the decree of the court below, and the case is to be tried here on appeal *de novo*" (see "*The Charles Morgan*," 115 U. S., 69–75), heard the cause.

In this case it is within the power of the Court, upon the facts as found, to declare the pilot-boat entirely and solely in fault, in which event the libellants will lose their whole claim, which is, as found by the circuit court, the sum of ---------- $6,057 50

Our claim in the libel is for ---------- 13,000 00

The stipulation for value is ---------- 10,000 00

This is exactly what the brief of the respondent's counsel prays the court to decree (See pp. 4 and 10.)

The case at bar is, in its general aspect, somewhat similar to that of another case of my own, viz., "*The Alaska*," 130 U. S., 201.

There there were five libellants claiming a fund of $25,000. Each sued for $10,000 damages only. There was a motion to dismiss, because it was claimed that none of the libellants could in any ~~court~~ case recover more than $5,000, but this Court

denied the motion to dismiss because "the amount claimed was more than the statutory amount."

General Facts.

The brief of the respondents is merely a series of extracts from the findings, and the reasons for those findings, given by the circuit court.

The learned court has given the facts in its findings upon which this Court must base its conclusions of law, and it will not be governed or affected by the speculations of that court, so expressed as to justify the wrongful conclusions of law from which we have appealed.

JAMES PARKER,
Counsel for Appellants.

Office Supreme Court U. S.
FILED,
NOV 4 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 60

HENRY DEVERE ET AL., APPELLANTS,

versus

THE STEAMSHIP "HAVERTON," WILLIAM D. MILBURN & CO., OWNERS, APPELLEES.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF IN BEHALF OF SS. HAVERTON AND OWNERS, APPELLEES.

J. McCONNELL.
Proctor for Respondents.

A. W. Hyatt, Printer and Stationer, 73 Camp street, N. O.—53,719.

Supreme Court of the United States.

No. 60

HENRY DEVERE ET AL., APPELLANTS,

versus

THE STEAMSHIP "HAVERTON," WILLIAM D. MILBURN & CO., OWNERS, APPELLEES.

Appeal from the Circuit Court of the United States for the Eastern District of Lovisiana.

BRIEF IN BEHALF OF SS. HAVERTON AND OWNERS, APPELLEES.

The first question to be considered in this case, is one in regard to jurisdiction, that necessarily arises from an inspection of the record. We submit respectfully, that this court has in the premises,

NO JURISDICTION.

The amount or value of "the matter in dispute" in this case, so far as relates to the controversy in this Court, does not "exceed the sum or value of five thousand dollars," and therefore, this Court is absolutely without jurisdiction, to "hear and determine" the appeal here taken.

The suit is brought to recover the value of the pilot boat Mary & Catharine, and also the value of certain personal effects on board of her, at the time of the collision. The value of the property was determined by the findings of the Circuit Court to be as follows: The value of the schooner $5025, and the value of the personal effects $1032, making a total valuation of $6057. By the decree of the Circuit Court the damages were divided, and Judgement was rendered in favor of the libellants for one half this total sum, to-wit, for $3,028.50. The matter in dispute therefore, in this Court on the appeal, is merely the difference between these two sums, to wit: $3028.50 and as this is less than the amount which limits the jurisdiction of this Court, the appeal cannot be entertained and must be dismissed.

The recently decided case of Dows & another vs. Johnson, 110 U. S., 223, is precisely in point in support of this view.

This Court there held as follows:

"We have no jurisdiction in this case. The suit was "brought by Dows & Co. to recover damages for the unlawful "conversion of 10,000 bushels of corn, the value of which, "*according to the findings*, did not exceed $6000. With interest "added to this sum, from the date of the alleged conversion, "until the judgment, the most that could have been recovered "upon the special finding, was $6360. A judgment was, in fact, "rendered for $2430. *The matter in dispute in this Court is the* "*difference between these two sums*, or only $3930.

"In Hilton vs. Dickinson, 108 U. S., 165, it was settled "that our jurisdiction depends on the value of the matter in "dispute *here*, and as that in the present case is less than $5000, "it follows that the suit must be dismissed, and it is so "ordered."

In this case the Court very properly accepted as "the value" of the property lost, the amount of the value as stated in "*the findings*" of the Circuit Court, because the value of the property lost is purely a question of fact, and as such is conclu-

sively determined by the Circuit Court, and if there were room for doubt on this point, the case cited is a judicial interpretation of the law, showing that this Court will accept such value "according to the findings."

No formal motion to dismiss an appeal is necessary in a case like the present one, and therefore none was made. In Hilton vs. Dickinson, 108 U. S. 168, this Court held, "if on looking into a record we find that we have no jurisdiction, it is our duty to dismiss on our own motion, without waiting the action of the parties."

In view, therefore, of the ruling in these, and numerous other cases that might be cited, we cannot see how jurisdiction in this Court can be maintained, and we ask accordingly that the appeal be dismissed.

Knowing that no appeal could be taken by the defendants because they were condemned to pay less than $5000, and believing that the libellants could not appeal because the value of the matter in dispute as to them, in this Court, would be only $3028.50 and interest, we were and are satisfied that the result of the appeal taken must be a judgment of dismissal of the appeal for want of jurisdiction.

Still, if the libellants can bring to hearing before this Court an appeal where the matter in dispute here is less than $5000, as is shown by the ruling in the case of Dows and another vs. Johnson above cited from 110 U. S., then the defendants submit, that they also should have the full benefit of such hearing, and if the decree of the Circuit Court as to them is found to be erroneous, as we claim it to be, then it should be reversed. And in such contingency we respectfully ask that this may be done. And we ask this on the authority of the reasoning of this Court, as expressed in the case of Hilton vs. Dickinson, 110 U. S. pages 174 and 175.

If, therefore, notwithstanding the foregoing considerations in which we respectfully submit, it has been shown, that "the matter in dispute" in this Court, is the sum of $3028.50 with 5 per cent. interest thereon from Nov. 6, 1885, and no more, the Court should still entertain jurisdiction of the case, then we contend that a careful consideration of the facts found by his Honor, the judge of the Circuit Court, under the rules of law governing the navigation of these vessels, preclude the libellants from any recovery whatever against the defendants, and therefore, if the libellants are heard at all on the appeal, this Court should not only not increase the damages, by allowing the additional $3028.50, but should reverse the decree of the Circuit Court, and relieve the defendants from the payment of damages, which the libellants are shown by the findings, to have brought upon themselves, by their own culpable negligence.

FAULTS OF THE MARY & CATHARINE. AS SHOWN BY THE FINDINGS.

The faults of the Mary and Catharine which should preclude her owners from any recovery in this case are as follows :

1st. In not carrying a white light at her mast head, visible all around the horison.

2d. In not exhibiting a flare up light or flare up lights, at short intervals, while she was cruising in pursuit of employment as a pilot boat.

The Court having found as a fact, that this pilot boat was "on a business cruise," and, "at the time of the collision was under weigh on a cruise, in pursuit of employment as a pilot boat", and that "New York pilot boats cruise for business hundreds of miles off Sandy Hook," it follows, that she should have th en conformed to the requirements of the 9th Rule of Navigation, and carried the lights above specified.

See Revised Rules of Navigation, Act of 84-85, p. 438.

Marsden on Collisions, p. 334.

The City of Washington, 92 U. S. 31.

3d. In having her helm lashed, and recklessly keeping her helm lashed, when she saw the Haverton approaching, and that a collision was imminent.

See opinion of Justice Blatchford in the case of the Transit, 3 Benedict, 194.

Marden's on Collision, p. 366.

4th. In having their vessel in careless shape, the pilots and crew and watch all below and asleep, except one boy—with sails set and helm lashed—in the way of ships, having no lights but side lights, which do not show astern.

Without arguing these specifications of fault *in extenso*, we will in support of them, here collate the prominent facts in regard to them as shown by the "findings" and "observations" of the Circuit Court, indicating numerically, the findings from which the extracts, are taken. In making these extracts, we will emphasize some points, by our own *italics*.

From No. 1. "About half past two o'clock on the morning of the 6th of Nov. 1885, the steamship Haverton collided with and sunk, the schooner or pilot boat Mary and Catharine, at a point off the coast of New Jersey, about twenty-two nautical miles easterly from Absacom Light House, and about seventy-five miles southerly from Sandy Hook. The night was dark but clear, so that there was no difficulty in seeing ship's lights, properly exposed."

From No. 2. "The schooner Mary and Catharine was a New York pilot boat of 38 64-100 tons burden, about 64 feet long, *and for some time prior to and at the time of said collision*, SHE WAS CRUISING *in above vicinity*, hove to on the starboard tack, under double reefed main and foresail, bonnet off the jib, and staysail, the staysail sheet hauled to windward and THE HELM LASHED AMIDSHIPS *under a headway of about two knots an hour.*"

From No. 3. "The Mary and Catharine had on board four New York pilots, a crew of one seaman, one boat keeper, one cook, and two young men rated as boys. *The watch* on deck was *supposed to be* made up of one pilot, Stoffrieden, and one boy, Peterson, *but as a matter of fact, Stoffrieden was below lying down, and Peterson keeping watch.* * * * All the rest of the people aboard were below and *asleep.*"

From No. 4. "The Mary and Catharine, before and at the time of the collision, carried one green and one red side light, set and burning. *Her mast head light was aloft in a cage,* SO THAT IT MADE NO SHOW OF LIGHT, but was ready to be used."

From No. 5. "From fifteen to twenty minutes before the collision, Peterson discovered the green light of the steamship Haverton, on the port and lee quarter, and he thereupon called the pilot on watch from below, who came on deck and with the glass observed the green light, *pronouncing the coming vessel to be a steamer,* and soon after observed a white mast head light, apparently just being hoisted up."

From No. 7. "The course of the Mary and Catharine was not changed, *nor was the condition of her sails and helm altered,* after the discovery of the steamship and prior to the collision, nor was the course of the steamship altered or changed during that time."

From No. 10. "The pilot boat Mary and Catharine, a few days previous, had left New York on *a business cruise, and* AT THE TIME OF THE COLLISION WAS UNDER WEIGH ON A CRUISE IN PURSUIT OF EMPLOYMENT AS A PILOT BOAT." * * * * "New York pilot boats cruise for business hundreds of miles off Sandy Hook."

From No 11. "The propeller Haverton was a British steamship, built of iron, of over 2560 tons; was over 300 feet long and forty feet beam. She was thoroughly furnished with all appliances known and necessary for successful navigation, including an electric telegraph from the main bridge to the en-

gine room, and with steam steering and reversionary apparatus, and was well officered, manned and equipped."

From No. 12. The Haverton was bound on a voyage to New Orleans. After passing Sandy Hook she took her course by compass south by west, which was the proper course for the voyage, and continued such course without interruption or deviation until 2:30 A. M., of the 6th day of November, when the collision aforesaid occurred. * * *

From No. 21. The schooner Mary and Catharine was in fault in *not carrying a white light at her mast head, visible all around the horizon, and in not exhibiting a flare up light, or flare up lights, at short intervals while she was cruising, as herein before described, and she was also in fault in not taking any precautions, by way of unlashing her helm, and calling the watch below, when it became apparent, as it did, that she was not observed by the Haverton, and that a collision was imminent.*"

With such *facts* found against the libellants, establishing such gross negligence on their part, it seems surprising that they could recover damages for the collision, which these facts show, was attributable to their own negligence.

But the surprise of the allowance of damages in the face of such facts, is increased, when these facts are considered in the light of the "reasons and observations" of the Court, which are appended to the findings, as the following extracts therefrom will show:

Extracts from the "reasons and observations" appended to the findings of fact.

"In explanation of the foregoing findings, it is proper to say * * * I have made *no point on the Haverton's* defective mast head light *as a fault*, because the presence or absence of the mast head light, did not affect the ability of the watch ont he pilot boat,

to discover the Haverton in season. * * * THE CARELESS SHAPE IN WHICH THE PILOTS PUT THEIR BOAT, AND WENT BELOW TO SLEEP, SHOWS HOW RECKLESS OF DANGER SUCH MEN BECOME, IN THE WAY OF SHIPS. SAILS SET, HELM LASHED, NO LIGHTS BUT SIDE LIGHTS, WHICH DO NOT SHOW ASTERN, AND A BOY (in their own estimation) ON WATCH. The whole case leaves an impression on my mind, that the witnesses are mistaken as to the time elapsing between the discovery of the Haverton and the collision." * * * "The Haverton's rate of speed was ten and a quarter knots, and that of the pilot boat in the same general direction two knots; so that, if Peterson saw the Haverton twenty minutes before she came up, she must have been nearly three miles off, and Stoffreiden coming at once on deck, could hardly have seen at that time and distance a point or two between her masts; and it seems to me, that in that time, good seamen (as all pilots ought to be), would have called some of the watch below, and made some preparations for handling the schooner in an emergency." * * * "IF WE TAKE IT, THAT PETERSON DID NOT DISCOVER THE HAVERTON, UNTIL SHE WAS NEAR ENOUGH FOR HIM TO PLAINLY SEE HER GREEN LIGHT, AND THAT STOFFREIDEN WAS ASLEEP WHEN CALLED, AND CAME HASTILY ON DECK, AND THAT THE COLLISION IMMEDIATELY FOLLOWED, SINKING THE SCHOONER WITHIN TWO OR THREE MINUTES, ALL THE SURROUNDINGS OF THE CASE ARE HARMONIZED, AND WE CAN UNDERSTAND WHY THE SCHOONER, HAVING NO LIGHT ASTERN, WAS NOT SOONER SEEN, AND WHY SHE WAS NOT PUT UNDER CONTROL, AND WHY SHE WAS DESERTED SO SPEEDILY, LEAVING A MAN ASLEEP ON BOARD, AND WHY THE HAVERTON SAW NO MORE OF HER."

A consideration of the foregoing extracts, from the "findings" and "observations" made by the Circuit Court, would certainly seem to render both inequitable and unjust, any decree whatever for damages in favor of libellants, who were found by the Court to be guilty of such culpable negligence and gross mismanagement.

We understand the rule to be, that "a plaintiff in a cause of collision must prove *both care on this own part* and want of it in the defendant."

The Clara 102 U. S., 202.

Parsons on Shipping, V. 1, page 528.

FAULTS OF THE HAVERTON.

A careful perusal of all the findings and observations made by the circuit judge, when *considered together*, shows very little, if any, real ground for charging fault in the steamship. In the 14th finding we read, that "at the time of, and just prior to, the collision aforesaid, the second officer of the Haverton was on watch as officer of the deck, and a lookout was stationed on the lookout bridge. These two, with the man at the wheel, and two sailors, one of whom was working passage out to New Orleans, constituted all the watch on deck." Certainly one of these five wide awake officers and seamen, would have seen the pilot boat Mary and Catharine, if she had carried "a white masthead light visible all around the horizon," or shown "flare up lights at short intervals," or, indeed, have exhibited any lights at all.

In the 21st finding, the pilot boat is specifically condemned for not complying with these requirements of rule 9, which, if complied with, would have enabled the Haverton to have seen and avoided her.

We submit, that the fair construction of the "findings and observations" of the Court taken together show, that the lowering and hoisting again of the mast head light of the Haverton, distracted the attention of the officer and lookout of the steamer, who were both on the forward bridge, but for a short time, and that then, as the lookout remained on the forward bridge all the time, and the officer of the watch performed the duty of the lookout, while the latter was engaged hoisting the lamp, it is manifest, that the Pilot boat would have been seen in time, if she

had shown the lights required by law, or any lights whatever which could be seen astern.

CONCLUSION.

We are satisfied the appeal herein taken should be and will be dismissed for want of jurisdiction in this Court, to "try and determine" a cause where the matter in dispute, exclusive of costs, is less than $5,000.

If, however, contrary to our expectations, the appeal should be entertained, we are confident that, upon the findings made, there could be no increase of the amount allowed to the libellants.

If the appeal is entertained, the amount or value of the matter in dispute being only $3028.50 with interest, and therefore less than the appealable amount, then we ask, that the defendants should have equal right and benefit under such appeal, (as they should have, under the reasoning expressed by this court, in the case of Hilton vs. Dickinson, 108 U. S., pages 174 and 175), and, under the "findings and observations," made by the Circuit Court, we contend, that the libellants sustained loss, solely through their own gross fault and culpable negligence, and therefore, the decree awarding them half the damages should be reversed, which the respondents pray may be done.

Respectfully submitted,

J. McCONNELL.

Proctor for Respondents.